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THIRUCHELVASEGARAM MANICKAVASEGAR

v.

MAHADEVI NADCHATIRAM (NO 3)

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HIGH COURT MALAYA, KUALA LUMPUR
RK NATHAN J
[CIVIL SUIT NO: S2-23-04-1997]
14 MAY 1998

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CIVIL PROCEDURE: *Action - Consolidation of actions - Whether amendment of writ preferred - Consolidation of latter case with former and not vice versa*

This was an application by the plaintiff for consolidation of this action ('the S2 Suit') with another subsequent suit ('the S5 Suit') and for both to be heard together. The plaintiff, an advocate and solicitor, had filed this action for defamation against the defendant, also an advocate and solicitor and his sister-in-law. When the writ for the S2 Suit was served on the defendant, the defendant whilst acknowledging receipt of the said writ, also wrote some words on the reverse side of the sealed copy of the said writ which the plaintiff alleged were defamatory, hence the basis for the subsequent S5 Suit.

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Held:

[1] Instead of applying for consolidation, all the plaintiff had to do was to amend the S2 Suit to include the further publication since the said publication on the reverse side of the writ arose as a result of this suit. Then there would have been only one suit.

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[2] The latter suit should be consolidated with the former to show a semblance of impartiality. On the contrary, the plaintiff attempted to consolidate this action which was filed earlier in time with the S5 action which was filed later in time.

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[Application dismissed.]

For the plaintiff - M Thiruchelvasegaram; M/s Syarikat M Segaram
For the defendant - Mahadevi Nadchatiram; M/s Mahadevi Nadchatiram & Partners

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Reported by Ling Hea Hoon

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JUDGMENT

RK Nathan J:

This is an application (encl. 96) by the plaintiff to consolidate this action (the S2 suit) with Kuala Lumpur High Court Originating Summons S5-23-08-97 (the S5 suit) and for both to be heard together. This is also my third judgment in respect of this case. The two being reported in [1998] 5 MLJ 523 and 530.

Facts

The plaintiff, an advocate and solicitor, filed this action for defamation against the defendant, also an advocate and solicitor, and also his sister-in-law.

The cause of action in the S5 suit arose in this manner. When the S2 suit was served on the defendant the defendant whilst acknowledging receipt of the said writ, also wrote on the reverse side of the sealed copy of the S2 writ the following words:

> Segeram,
>
> I am not your enemy but your friend. I have not read your summons, it is most unfair for you to chase harass me continuously since London days in 1960's - that time you wrote to complain about me going out with white boys to my parents and now you keep chasing me.

It is the plaintiff's case that by writing the above words and by dictating aloud these words to her staff and to the plaintiff's solicitor's clerk she had published words of slander and libel. The plaintiff also contended that the defendant ought to have known at the time when she wrote the said passage that it would be most likely to be read by the honourable judges, registrars and other staff of the High Court at Kuala Lumpur as the sealed copy of the writ of summons would be exhibited to the court as evidence of service of the writ. This was the basis for the second suit for defamation, namely, the S5 suit.

In fact this is very readily admitted to by the plaintiff in his written submission, which reads:

> 3. The Kuala Lumpur High Court Civil Suit No: S5-23-08-97 was filed by the plaintiff against the defendant as a result of further publication of libel on the service copy of the Writ of Summons No: S2-23-04-97 and subsequent correspondence.
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> 4. These two pending libel suits involved the same parties and therefore the court has the discretion to make the order for consolidation.[2]

Court's Findings

There was a simple answer to this. All that the plaintiff had to do was to have amended this S2 suit to include the further publication since the said publication on the reverse side of this writ arose as a result of this suit. If the plaintiff had been minded to amend then there would have been in any case, only this suit.

Even assuming the plaintiff was minded to consolidate, surely common sense dictates, unless one wants to be labelled with the charge of "judge choosing", to consolidate the latter suit with the former to show a semblance of impartiality. On the contrary the plaintiff herein is attempting to consolidate this action which was filed earlier in time with the S5 action and which was filed later in time.

On both these grounds this application must fail.

There is one other issue that I have to consider. There was another case involving the same plaintiff and his daughter. That case is Kuala Lumpur High Court Civil Suit No. S2-22-562-93. The daughter sued both her parents and one other, the plaintiff being the 1st and his wife the 2nd defendant. I had case managed the said suit and the parties having prepared all necessary bundles, I had fixed that case for hearing. On the morning of the trial the plaintiff retained the services of Mr. Manjeet Singh Dhillon and Mr. Jagjit Singh and they urged upon, and pleaded with me to disqualify myself on the basis that I knew all the parties. Reluctantly I agreed. On reflection, I ought not to have done so.

A judge of the High Court appointed to this noble and exalted office, and if he was an active practitioner prior to his appointment, would know, in very familiar terms, almost all of the senior practitioners and many others of the Bar. If such a judge is to disqualify himself each time a familiar face appears before him, he will never be able to do the work he took the oath to perform. A judge will decide on the issues before him upon facts and evidence presented to him. No judge would demean his office by deliberately ignoring evidence or being partial. In the unlikely event of such an omission due to oversight, there is always the appellate court where his error can be corrected.

An attempt to disqualify a judge must be totally discouraged. A judge should, if he is of the view that he ought not to proceed to hear the case, on his own volition, disqualify himself. As of late there are frequent applications of such a nature. Clearly suspicions and accusations can abound that both lawyers and clients are resorting to judge choosing. In the early days of practice such a phrase as "judge choosing" was unheard of and any application of such a kind was considered anathema. Judges of today who were practitioners of yester-

years both from the bar and from the service, would recollect with awe and trepidation their experiences before those judges of victorian temperament of those early days. Yet they survived and moulded their character and levied no accusations against any judge, nor sought their disqualification. The frequency and frivolity of such applications made today suggest that there is no serious attempt by counsel to stand up and say "I shall prove my case through all adversity, but if I fail, then with trust and faith upon my own effort, I will succeed yet again."

This application for consolidation is therefore rejected. Costs to follow the event.